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Subject: Comment on Docket ID No. EPA-R04- OW-2020-0056
Date: Monday, April 13, 2020 12:00:06 PM

(The website did not seem to work so we are submitting via email.)

Dear Mr. Wheeler,

We write as concerned citizens and law students regarding the Environmental Protection Agency's proposed modification of the EPA-Designated Ocean Dredged Material Disposal Site offshore of Port Everglades, Florida. The proposed modification relies on data that have already been shown to ignore the impact on coral in PortMiami. It also ignores other environmental assessments of dredging and dumping which show this new expansion will jeopardize the coral within Port Everglades. Additionally, moving forward with this proposal amidst the national and global COVID-19 pandemic runs afoul to the rulemaking procedural requirements outlined within the APA, as the public is not able to properly participate.

Environmental Assessment Issues

Environmental Assessments made of the dredging conducted at PortMiami have affirmatively concluded that there was a disproportionately harmful impact to the environment as a consequence. Hundreds of thousands of corals were impacted by the dredging and over roughly 250 acres of their critical habitat protected under the MPRSA was damaged permanently. The U.S. Army Corps of Engineers were sued under the Endangered Species Act and were required to relocate many of the coral affected as a consequence. Subcontractors of the dredging companies also issued reports of the effect of dredging which showed data of widespread sediment-related harm to coral reefs. From this data Miami Waterkeepers concluded that approximately 560,000 corals were killed and that an area of 25km was subsequently impacted. To add insult to injury, the Army Corps' biologist pled guilty to lying to federal agents about taking money from the contractors on the job.

The Port Everglades project is using the same assessments used at PortMiami as a justification for moving forward with the project. Given what happened at PortMiami, the irreparable loss of fragile coral, and the additional expense of relocating the coral that survived, it is essential that the EPA not rest their decision to proceed with this proposal on the same environmental assessments that underlied the PortMiami dredging. The Corps has since acknowledged the negative impact to the environment at PortMiami. Nevertheless, they still have yet to incorporate the lessons learned from these environmental assessments to the Port Everglades proposal. Port Everglades rests merely 30 miles up the coast from PortMiami and crosses

the same Florida reef tract. Thus, it is very likely that the proposed dredging will have similar devastating effects if the EPA approves this proposal guided by the environmental assessments known to underestimate the risks to protected species.

In response to a lawsuit by the Miami Waterkeepers against the dredging in Port Everglades, the Corps has agreed to conduct a new environmental assessment of the project. As such, the Corps has, at the very least, effectively conceded that their original data does not rest on sound scientific data that would suffice as evidence for a formal rulemaking process. Forming this rule on such unsound data puts the Port Everglades coral ecosystem at risk.

APA Rulemaking Procedural Concerns & COVID-19 Pandemic

The APA § 553 outlines the rulemaking requirements an agency must follow when implementing informal rulemaking. Informal rulemaking has three main requirements. First, notice of the proposed rule must be published in the Federal Register. Notice should include “a statement of the time, place, and nature of the public rulemaking proceedings, reference to the legal authority under which the rule is proposed, and either the terms of the substance of the proposed rule or a description of the subjects and issues involved.” After publication, there must be an opportunity for public comment. Finally, the agency must issue a general statement of basis and purpose with the finalized rule, explaining the grounds and responding to comments. The final rule must be a logical outgrowth of the proposed rule.

Given that the Army Corps of Engineers has already conceded that the environmental data underlying this proposed rule is faulty, and has agreed to conduct new studies, initiating an informal rulemaking process at this point conflicts with the APA requirements because that new data will not be available to the public within the proposed notice and comment period. The public cannot adequately comment without access to sound scientific data in the notice regarding the project and its implications on the environment. Commenting in this situation would disrupt the logical outgrowth requirement of the proposed rule such that any comments, as well as the final rule, would be grounded in concededly inadequate data.

Alternatively, failing to extend the comment period amidst the COVID-19 pandemic violates the APA requirements because the public cannot adequately and meaningfully participate. Countless people are being affected by the pandemic and cannot participate due to illness and lack of resources. The shelter in place that has been issued within states around the country have forced people to stay home. Thus, they cannot go to libraries, work, school and other places where they could do research and access the internet to make comments. To date, only nine comments have been received. (https://www.regulations.gov/document?D=EPA_FRDOC_0001-25174).

Several organizations have called for the commenting period to remain open until 60 days after the emergency is lifted. Many congressional chairs have supported this call by stating that "The right of the American people to meet with federal agencies and comment on proposed actions is invariably affected by the ongoing pandemic." The APA requires that the public has an effective chance to comment and the pandemic will disparately impact their chance to do so. In the interest of environmental justice, equity and democracy it behooves the EPA to extend the comment period.